



FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements contained in the rules and regulations under the Pay-Per-Call Rule (Rule). That clearance expires on November 30, 2021.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write “Pay-Per-Call Rule; PRA Comment: FTC File No. P072108” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: P. Connell McNulty, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC-8528, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326-2061.

SUPPLEMENTARY INFORMATION:

Title: Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (“Pay-Per-Call Rule”), 16 CFR Part 308.

OMB Control Number: 3084-0102.

Type of Review: Extension of a currently approved collection.

Abstract: The existing reporting and disclosure requirements of the Pay-Per-Call Rule are mandated by the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely Respondents: telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities.

Estimated Annual Hours Burden: 1,029,570 hours (18 + 1,029,552)

Reporting: 18 hours for reporting by common carriers

Disclosure: 1,029,552 [(21,240 hours for advertising by vendors + 21,732 hours for preamble disclosure which applies to every pay-per-call service + 7,080 burden hours for telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity) + 11,500 burden hours for dispute resolution procedures in billing statements (applies to billing entities) + 968,000 hours for disclosures related to consumers reporting a billing error (applies to billing entities)]

Estimated annual cost burden: \$50,456,136 (solely relating to labor costs).¹

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's Pay-Per-Call Rule.

Burden Estimates:

Brief description of the need for and proposed use of the information

The existing reporting and disclosure requirements are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely respondents and their estimated number:

Respondents are telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. Staff estimates that there are 6 common carriers, approximately 5,900 vendors, and approximately 2,300 possible billing entities. The FTC seeks public comment or data on these estimates and those stated below.

Estimated annual reporting and disclosure burden: 1,029,570 hours; \$50,456,136 in associated labor costs.

¹ Non-labor (e.g., capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (e.g., business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

The burden hour estimate for each reporting and disclosure requirement has been multiplied by a “blended” wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine its total annual cost. The blended rate calculations are based on the following skill categories and average wage rates and/or labor costs: \$123/hour for professional (attorney) services; \$20/hour for skilled clerical workers; \$46/hour for computer programmers; and \$60/hour for management time. These figures are averages, based on the most currently available Bureau of Labor Statistics (“BLS”) cost figures posted online. FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours discussed further below.

(1) Reporting burden (applies to common carriers):

The Rule provides that common carriers must make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements between the carrier and any vendor or service bureau (other than for the provision of local exchange service). See 16 CFR 308.6. Staff believes that the resulting burden on this segment of the industry will be minimal, since OMB’s definition of “burden” for PRA purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(b)(2). Because this reporting requirement permits staff to seek information limited to that which is already maintained by the carriers, the only burden would be the time an entity expends to compile and provide the information to the Commission. Because the Commission has seldom needed to rely on this requirement, staff estimates the annual time for reporting at 3 hours per entity.

In obtaining OMB clearance for this reporting requirement in 2015, staff estimated a total reporting burden of 18 hours. For 2021, staff is maintaining the total burden estimate of 18 hours, based on an average estimate of 3 hours expended by 6 common carriers. Using a \$56/hour blended wage rate, the FTC now estimates an annual cost of \$1,008.

(2) Disclosure burden:

(a) Advertising (applies to vendors). FTC staff estimates that the annual burden on the industry for the Rule's advertising disclosure requirements is 21,240 hours. The estimate reflects the burden on approximately 5,900 vendors who must make cost disclosures for all pay-per-call services and additional disclosures if the advertisement is (a) directed to individuals under 18 or (b) for certain pay-per-call services. Because of continued industry changes and the fact that the Commission has seldom needed to rely on this requirement, staff is retaining the estimated percentage of advertising both directed to individuals under 18 and relating to certain other pay-per-call services to 20 percent of overall pay-per-call services. FTC staff estimates that each disclosure mandated by the Rule requires approximately one hour of compliance time. The total estimated annual cost of these burden hours is \$1,040,760, applying a blended wage rate of \$49/hour.

(b) The Rule's preamble disclosure (applies to every pay-per-call service). To comply with the Act, the Pay-Per-Call Rule also requires that every pay-per-call service be preceded by a free preamble and that four different disclosures be made in each preamble. Additionally, preambles to sweepstakes pay-per-call services and services that offer information on federal programs must provide additional disclosures. Each preamble need only be prepared one time, unless the cost or other information is changed. There is no additional burden on the vendor to make the disclosures for each telephone call, because the preambles are taped and play automatically when a caller dials the pay-per-call number.

Staff believes that the industry has had at least a 12 percent reduction in size since 2015 (when there were an estimated 20,580 pay-per-call services). Accordingly, staff now estimates that there are no more than 18,110 advertised pay-per-call services.

As with advertising disclosures, preambles for certain pay-per-call services require additional preamble disclosures. Consistent with the estimates of advertised pay-per-call services discussed above, staff estimates that 20 percent of all such pay-per-call services (3,622) relating to certain types of pay-per-call services would require such additional disclosures. Staff

estimates that it would require no more than one hour to draft each type of disclosure because the disclosures applicable to the preamble closely approximate in content and volume the advertising disclosures discussed above. Accordingly, staff estimates a total of 21,732 burden hours (18,110 + 3,622) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is \$1,064,868, using a blended wage rate of \$49/hour (i.e., the same blended rate used for advertising disclosures).

(c) Telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity). Section 308.5(j) of the Rule, 16 CFR 308.5(j), requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, FTC staff estimated that the burden to comply would be minimal. At most, the burden on the vendor would be limited to spot checking telephone bills to ensure that the charges are displayed in the manner required by the Rule.

As it had in the 2015 PRA submission, FTC staff estimates that only 10 percent of vendors would monitor billing statements in this manner and that it would take 12 hours per year to conduct such checks. Using the total estimated number of vendors (5,900), this results in a total of 7,080 burden hours. The total annual cost would be at most \$354,000, using a blended rate of \$50/hour.

(d) Dispute resolution procedures in billing statements (applies to billing entities). This disclosure requirement is set forth in 16 CFR 308.7(c). The blended rate used for these disclosures is \$49/hour. FTC staff previously estimated that the billing entities would spend approximately 5 hours each to review, revise, and provide the disclosures on an annual basis. The estimated hour burden for the annual notice component of this requirement is 11,500 burden hours (based on 2,300 possible billing entities each requiring 5 hours), or a total cost of \$563,500.

(e) Further disclosures related to consumers reporting a billing error (applies to billing entities).

As in the 2015 PRA submission for this Rule, FTC staff estimates that the incremental disclosure obligations related to consumers reporting a billing error under section 308.7(d) requires, on average, about one hour per each billing error. Previously, staff projected that approximately 5 percent of an estimated 22,001,000 calls made to pay-per-call services each year involves such a billing error. The staff is now reducing its prior estimate of the number of those calls by approximately 12 percent (to 19,360,880 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 968,000 hours, cumulatively. Applying the \$49/hour blended wage rate, the estimated annual cost is \$47,432,000.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write "Pay-Per-Call Rule; PRA Comment: FTC File No. P072108" on your comment. Your comment—including your name and your state—will be

placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "Pay-Per-Call Rule; PRA Comment: FTC File No. P072108" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) —including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see *<https://www.ftc.gov/site-information/privacy-policy>*.

Josephine Liu,
Assistant General Counsel for Legal Counsel.

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